



IN THE CIRCUIT COURT OF LIMESTONE COUNTY, ALABAMA

STATE OF ALABAMA,

PLAINTIFF,

vs.

CASE NO. CC19-476

BLAKELY, MICHAEL ANTHONY,

DEFENDANT.

**MOTION TO DISMISS COUNT NINE OF THE INDICTMENT FOR STATUTE OF
LIMITATION VIOLATION**

Comes now the Defendant, by and through counsel and hereby moves this Honorable Court to Dismiss Count Nine (9) of the indictment. As grounds, the Defendant states as follows:

1. Count 9 of the indictment charges the Defendant with "Theft of Property in the Fourth Degree" under Ala. Code §13A-8-5.
2. Theft of Property in the Fourth Degree is a misdemeanor.
3. Count 9 of the indictment alleges, in pertinent part, that the Defendant "... did knowingly obtain or exert unauthorized control over, or did knowingly obtain by deception control over, lawful U.S. currency and/or a check, to wit: a portion of the U.S. currency derived from a check in the amount of \$1500 and dated August 15, 2016 and/or a portion of the U.S. currency derived from a check in the amount of \$218.36 and dated August 22, 2016 ... of some value that does not exceed \$500 ..."
4. Ala. Code §15-3-2 states that "... the prosecution of all misdemeanors ... shall be commenced within 12 months after the commission of the offense."
5. In Nelson v. State, 151 Ala. 2, 43 So. 966 (1907), the Alabama Supreme Court ruled that where a defendant pleads the statute of limitations as a bar to prosecution, the burden of proof is upon the State to prove that the prosecution is legitimate.

Wherefore the Defendant respectfully contends that Count Nine (9) of the indictment violates the statutes of limitations and Ala. Code §15-3-2 and therefore should be dismissed.

Respectfully submitted this the 22nd day of October, 2019.

/s/ Robert B. Tuten
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CERTIFICATE OF SERVICE

This document has been filed electronically and served upon opposing counsel pursuant to the Administrative Procedure for Filing Signing and Verifying Documents by Electronic Means in the Alabama Judicial System. For any opposing counsel or unrepresented parties who are not registered to file electronically, a copy of this pleading shall be served via the U.S. mail, postage pre-paid, to the litigant's address as maintained in the office of the Circuit Clerk.

Done this 22nd day of October, 2019.

/s/ Robert B. Tuten
 ROBERT B. TUTEN